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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202162
Party	Defendant ChromaDex Inc.
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Submission	Answer
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Date	11/28/2011
Attachments	8788-100902 Biotivia LLC v ChromaDex Inc Answer to Notice of Opposition_1.pdf ( 6 pages )(222862 bytes )

8788-100902

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Biotivia, LLC	)	
	)	OPPOSITION NO. 91/202,162
Opposer,	)	
v.	)	
	)	
ChromaDex, Inc.,	)	
	)	
Applicant.	)	
Serial No.: 85/193,003	)	
Filed: December 8, 2010	)	
Mark: THE NEXT	)	
GENERATION RESVERATROL	)	
Published: August 23, 2011	)	

ANSWER TO NOTICE OF OPPOSITION

ChromaDex, Inc., Applicant in the above-identified Opposition, hereby responds to the Notice of Opposition filed by Biotivia, LLC (hereinafter "Biotivia") opposing registration of the THE NEXT GENERATION RESVERATROL Application Serial No. 85/193,003.

In response to the Notice of Opposition of Opposer, Applicant states as follows:

I. According to the Trademark Office records, on or about December 8, 2010, Applicant, Chromodex, Inc. ("Chromadex"), filed an intent-to-use application, under section 1B, for the registration of the mark "The Next Generation Resveratrol," with Serial No. 851.93003, (the "Mark") in International Class 001 for "Phytochemicals for use in the manufacturing of dietary supplements, nutritional supplements, nutritional beverages, pharmaceuticals and cosmetics."

ANSWER: Admitted.

2. The Mark was published for opposition on or about August 23<sup>rd</sup>, 2011.

ANSWER: Admitted

3. Opposer, Biotivia, LLC ("Biotivia"), has timely filed for, and the Trademark Trial and Appeal Board has granted, a 30-day extension of time to file an opposition to the registration of the Mark until October 22, 2011.

ANSWER: Applicant admits only that an Extension of Time to file a Notice of Opposition was filed with the Trademark Trial and Appeal Board against Applicant's mark. Applicant denies each and every other allegation remaining in Paragraph 3 of the Notice of Opposition.

4. Biotivia is a Delaware Limited Liability Company with a principal place of business at 1 River Place, Ste. 1001, New York, NEW YORK 10036 and manufactures and sells a variety of dietary supplements, including supplements which contain resveratrol and/or pterostilbene ingredients.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

5 Biotivia sells one or more finished products which contain the ingredient Pterostilbene.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

6. Chromodex sells one or more finished products which contain the ingredient Pterostabene, and is a direct competitor of Biotivia.

ANSWER: ChromaDex admits that it sells certain pterostilbene products but is with knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 6 of the Notice of Opposition and on that basis denies each and every allegation not specifically admitted.

7. Chromodex applies the Mark, on its website and in its advertising, to pterostilbene products.

ANSWER: Denied.

8. The phrase "Next Generation" is defined as "pertaining to the next generation in family; also, pertaining to the next stage of development or version of a product, service, or technology." (See Exhibit A).

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

9. Pterostilbene is described, in scientific and advertising literature, as a compound which is chemically related to resveratrol but has certain advantages over resveratrol, including higher bioavailability. Specifically, Pterostilbene is "a double-methylated version of resveratrol exhibiting a higher bioavailability as it is more easily transported into the cell and more resistant to degradation and elimination." (See Exhibit B).

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

10. Pterostilbene is often described as the next stage of development of resveratrol. Words like "next generation of resveratrol" and "next level of resveratrol" are used to describe pterostilbenes in general, and not any particular brand of pterostilbene, even when referring to Chromadex's products.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

11. At least one article dating back to 2009, well before Applicant's use of the Mark, touts pterostilbene as an advancement on resveratrol.

ANSWER: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Opposition, and on that basis denies each and every allegation contained therein.

12. The Mark "The Next Generation Resveratrol," by indicating that Chromadex's products, or pterostilbene in general, is an improvement over existing resveratrol supplements, is laudatory and informational, and thus is descriptive. Trademark Act section (e) (1); 15 U.S.C. § 1052(e)(1).

ANSWER: Denied.

13. The Mark consists primarily of a combination of words which, when applied to the goods of Chromadex, is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), in that the Mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the goods identified in the application for registration of the Mark, and/or is merely laudatory, and has no acquired distinctiveness or secondary meaning sufficient to support registration.

ANSWER: Denied.

14. The Mark does not function to identify Chromadex's goods and distinguish them from those offered by others and has no acquired distinctiveness or secondary meaning sufficient to support registration.

ANSWER: Denied.

15. Registration of the Mark will prevent Biotivia, a seller of pterostilbene supplements, from using phrases which are descriptive of pterostilbene, and will inhibit Biotivia's ability to accurately describe and effectively market its products.

ANSWER: Denied.

16. Chromadex seeks to prevent Biotivia from using phrases it deems "similar" to the Mark, and has filed a lawsuit in the Central District of California, case number 8:11-CV11-01273 CJC (MLGx), partly based on Biotivia's use of phrases such as "taking resveratrol to the next level," which are descriptive of pterostilbene.

ANSWER: ChromaDex admits that it has filed the specified lawsuit which claims speak for themselves.

17. Because the Mark is descriptive, registration should be refused.

ANSWER: Denied.

Applicant hereby denies each and every allegation contained in the Notice of Opposition which is not otherwise herein responded to.

### AFFIRMATIVE DEFENSES

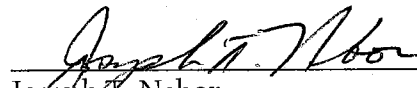
For its affirmative defenses to the Opposition, Applicant states as follows:

1. The Notice of Opposition fails to adequately state a claim upon which relief maybe granted.
2. On information and belief, Opposer lacks standing to bring the Notice of Opposition.

THEREFORE, Applicant respectfully prays that opposition to registration of it's THE NEXT GENERATION RESVERATROL mark, Application Serial No. 85/193,003, be dismissed, that a Notice of Allowance for Application Serial No. 85/193,003 be issued, and that Applicant be granted such other and further relief as the Board deems just and proper.

November 28, 2011

Respectfully submitted,  
ChromaDex Inc.

  
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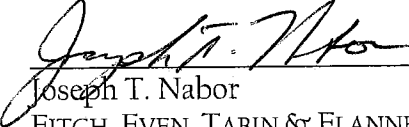
CERTIFICATE OF SERVICE

I, Joseph Nabor, Attorney for the Applicant, hereby certify that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by first class mail, postage prepaid, upon:

Aaron Shechet, Esq.  
Chandler & Shechet, LLP  
1844 Bagley Ave.  
Los Angeles, CA 90035

*Attorneys for Opposer*

on this 28<sup>th</sup> day of November 2011.

  
\_\_\_\_\_  
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